

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 10

LIFE UNIVERSITY, INC.<sup>1</sup>

Employer

and

Case 10-RC-15673

AFSCME LOCAL 1644

Petitioner

**REGIONAL DIRECTOR'S DECISION AND ORDER**

The Employer, Life University, Inc., is a nonprofit Georgia corporation located in Marietta, Georgia where it is engaged in the operation of an educational institution of higher learning and chiropractic studies. The Petitioner, AFSCME Local 1644, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit consisting of all regular faculty and adjunct faculty employed by the Employer.<sup>2</sup> A hearing officer of the Board held a hearing and the Employer and the Petitioner filed post-hearing briefs which were duly considered.

The Employer contends the petition should be dismissed because the faculty are managerial employees under *NLRB v. Yeshiva University*, 444 US 672 (1980) and subsequent Board precedent applying *Yeshiva*. The Petitioner contends that the faculty here are mere

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> At the hearing, the Petitioner amended the unit description as follows: all full-time and adjunct faculty, including the technical services librarian; the reference librarian; the director of faculty development; the director of career counseling; and the associate registrar, excluding all directors except the director of faculty development and the director of career counseling; all executive directors; the coordinator of articulation agreements; all deans; the assistant to the dean for program development; the associate dean in the College of Arts and Sciences; the assistant dean in the College of Arts and Sciences; all department chairs; all division chairs; the assistant to the provost for faculty affairs; the executive assistant to the president; the vice provost; the registrar; the manager of technical operations; all other employees; guards and supervisors, as defined in the Act.

instructors, not managers, and therefore an election should be directed.<sup>3</sup> I have considered the evidence and arguments presented by the parties on this issue. For the reasons discussed below, I have concluded that the regular faculty herein are managerial employees under *Yeshiva* and subsequent Board precedent applying *Yeshiva* and I shall, therefore, dismiss the petition.

## **I. OVERVIEW OF EMPLOYER'S ORGANIZATIONAL STRUCTURE**

The Employer is organized into three colleges: (1) the College of Chiropractic; (2) the undergraduate College of Arts and Sciences; and (3) the College of Graduate Studies and Research. Approximately 1300 students attend the College of Chiropractic, and approximately 550 students attend the undergraduate and graduate colleges. The Employer offers a Doctor of Chiropractic degree program; chiropractic students receive both classroom and clinical education under the supervision of clinical faculty in several clinics. The Employer also offers undergraduate programs in psychology, business, exercise science, nutrition, dietetics, and general studies, and a Master of Science degree in sport health science. The institution is accredited by the Council on Chiropractic Education.

The University's chief academic officer, Provost Brian McAulay, testified at the hearing that each of the three Colleges is headed by a dean. The faculty in the College of Chiropractic is divided into three divisions: basic sciences, clinical science, and chiropractic science. Each division is headed by a chair (who evidently also carries a teaching load). There is a similar organizational structure in the College of Arts and Sciences, except that there are department heads for each department (not divisions, as in the chiropractic college).

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<sup>3</sup> The Employer, contrary to the Petitioner, also argues that clinical faculty should be excluded from any unit because they are Section 2(11) supervisors and because they do not share a community of interests with nonclinical faculty. Also, the parties dispute whether the following job classifications and positions should be included in the faculty unit sought by the Petitioner: (1) adjunct faculty; (2) the director of faculty development; (3) the director of career counseling; and (4) the associate registrar. The Petitioner, contrary to the Employer, would include these classifications and positions in a faculty unit. In view of my determination herein with respect to the managerial status of the regular faculty, I need not reach any determination with respect to these issues.

The record reflects that the Employer employs approximately 90 faculty members, including approximately 60 regular faculty and 30 adjunct faculty. About 30 faculty in the chiropractic college are clinical faculty.<sup>4</sup> There are four rankings of regular faculty: (1) instructor; (2) assistant professor; (3) associate professor; and (4) professor. Adjunct faculty have no ranking. Though the Employer at one time operated on a tenure system, it does not do so now. Currently, all regular faculty are subject to one-year renewable contracts.<sup>5</sup> The record does not reveal when the Employer decided to eliminate the tenure system, or what, if any, input the faculty had in this decision.

## **II. FACULTY GOVERNANCE AUTHORITY**

The lead governing body of the faculty is the Faculty Senate; all regular faculty members are eligible to participate.<sup>6</sup> The faculty handbook sets forth the policies and procedures that govern the faculty, and states that:

Committees are organized to facilitate the work of the University. These committees represent the faculty and advise the administration with respect to the development and implementation of academic and administrative policies and procedures as well as provide formal communication between the various constituencies of the university. . .

The committees are recommending bodies and report to various administrative offices or other committees. . .

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<sup>4</sup> Chiropractic students receive an intensive clinical education involving an 18-month internship, with extensive patient interaction.

<sup>5</sup> Provost McAulay testified that the contract of only one faculty member has not been renewed in his almost four-year tenure with the Employer, and that this faculty member was not renewed after her first year. He also testified that there are approximately 20 faculty members currently employed who hold tenure under the old system.

<sup>6</sup> Adjunct faculty are not eligible to participate in the Faculty Senate; they do not sit on faculty committees and are not involved in the governance or management of the institution.

There are approximately 16 standing committees<sup>7</sup> described in the handbook, beginning with the Faculty Senate Executive Committee (the Executive Committee). The Executive Committee is elected by the Faculty Senate and is composed exclusively of faculty, including four officers (President, Vice-President; Secretary-Treasurer; and the Chair of the Faculty Affairs Committee), as well as two elected faculty members from each college. The Executive Committee is the chief advisory committee of the faculty and reports directly to the president. According to the faculty handbook, the Executive Committee reviews all proposals, recommendations, resolutions, and motions from committees which report directly to it.

There are three committees which report to the Executive Committee: the Faculty Affairs Committee; the Rank and Tenure Committee; and the Faculty Development Committee. The record establishes that the Faculty Affairs Committee is comprised exclusively of regular faculty, and that the current voting members on the other two committees are predominately regular faculty. The Faculty Affairs Committee recommends changes to the faculty handbook and other policies related to faculty. Provost McAulay testified that this committee recently recommended changes to handbook provisions relating to grievance procedure; these changes were approved by the Board of Trustees.<sup>8</sup>

The Rank and Tenure Committee makes recommendations to the deans pertaining to promotions and faculty rank. Provost McAulay testified that this Committee's recommendations

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<sup>7</sup> The handbook states that any faculty member may volunteer for committee appointments or nominate themselves or others for elected committee positions. Besides the 16 standing committees, there are 11 other committees in the handbook described as ad hoc, administrative, task force, forum, or council. In addition to the committees described in the faculty handbook, there are additional committees for faculty in the chiropractic college clinic system, including 12 standing committees covering matters pertaining to patient care; intern education; and clinic faculty and staff. According to the statement of "Clinic Committee Structure," these "committees . . . will be the primary source of activity in policy development and procedure implementation" for the clinics.

<sup>8</sup> Provost McAulay also testified that changes to the handbook were made a few years ago, as recommended by subcommittees appointed by the Faculty Senate. These changes pertained to faculty workload, compensation, evaluations, and promotion. Provost McAulay testified that in his almost four-year tenure with the Employer, the Board of Trustees has never failed to approve such changes in the handbook recommended by faculty committees.

have been followed in every instance in which promotion has been recommended. In a few instances in which the Committee did not recommend promotion, the faculty member appealed to the administration and was granted the promotion. The Faculty Development Committee makes recommendations with respect to training programs and incentives for faculty. Provost McAulay testified that he has “rubber-stamped” all recommendations made by this Committee during his tenure.

## **A. ACADEMIC MATTERS**

### **Curriculum and Related Matters**

There are three curriculum committees for the undergraduate and graduate colleges and the chiropractic college. The record establishes that faculty members predominate in the voting membership of the curriculum committees for the chiropractic and graduate colleges. Of the seven current members of the undergraduate curriculum committee, three are regular faculty, two are department chairs, and two (the registrar and the assistant dean) are administration representatives. According to Provost McAulay, these committees deal with “every aspect”<sup>9</sup> pertaining to curriculum, including new courses of study, prerequisite sequences, new degree tracks, and textbook selection. In recent years, new degree tracks recommended by these committees have included undergraduate degrees in psychology, exercise science, and biopsychology, and a masters degree program in nutrition in sports health science. Recommendations from these committees are made to the respective deans, and then sent to the provost for approval. Provost McAulay testified that he has never failed to accept a curriculum

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<sup>9</sup> The president was required in recent years to route a curriculum idea he had through the committee.

recommendation from the committees (though he indicated he has no knowledge as to what, if any, changes to committee recommendations have been made by the respective deans).<sup>10</sup>

The Employer took preliminary steps beginning in July, 2007 to formulate an “Academic Master Plan,” a long-range plan covering the next 12 to 15 years with respect to academic offerings, degree programs, and needed faculty for such programs. The due date for formulation of this Plan is October, 2008. Provost McAulay, working together with the president of the Faculty Senate, recently established 7 subcommittees to assist in formulating the Plan, including a steering committee and separate subcommittees for undergraduate programs, graduate programs, faculty roles, technology, professional programs, and student services. According to Provost McAulay, approximately 75% to 80% of the members of these committees are faculty.

### **Admissions**

There are three admissions committees for the undergraduate and graduate colleges and the chiropractic college. The record establishes that the members of these three committees are predominately faculty. The committees report to the respective deans and deal with all policies pertaining to admission; the committees also monitor review of applicants. Close cases for admission to the graduate and chiropractic colleges are individually considered by the respective committees, while undergraduate admissions are handled consistent with policy. Provost McAulay testified that he could recall only one instance in which an admissions committee recommendation was not followed.<sup>11</sup>

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<sup>10</sup> Though there is an overall curriculum committee for the chiropractic college, there is no curriculum committee specifically for the chiropractic clinics. According to Provost McAulay, this is because there is no curriculum “per se” in the clinics. Rather, the 12 clinic subcommittees described above function as an “analog” to a curriculum committee; each committee is responsible for specific operational and management issues pertaining to education and patient care in the clinics, such as system policy and procedures, quality management and assessment, peer review, intern education, and compliance with federal rules and regulations pertaining to safety and privacy.

<sup>11</sup> This involved an existing policy prohibiting the admission of a transfer student to the chiropractic college if he or she was not in good standing at the student’s previous institution. The president questioned the usefulness of this policy overall in connection with the denial of admission to a graduate transfer student. The student was

## **Testing**

The clinical skills of chiropractic students are tested in two stages of the program through an all-day objective structured clinical examination (OSCE). There is an OSCE Committee which develops and implements these examinations, and analyzes testing, grades, and outcome. This Committee determines the content of the testing and manages the testing process. According to Provost McAulay, this testing is “their show.” Virtually all of the members of this Committee are faculty.

## **Scheduling**

In the chiropractic college, there is a Scheduling Committee which prepares all schedules, including lecture rooms, lab rooms, and class schedules. The members of this Committee are predominately faculty, and forward their recommendations to the dean and the provost. Provost McAulay testified that he believed this Committee’s recommendations have been followed by the administration.<sup>12</sup> There is no evidence in the record with respect to scheduling matters at the undergraduate and graduate colleges.

## **Accreditation**

The institution was subject to an accreditation review by the Council on Chiropractic Education (CCE) in 2004. Several subcommittees of faculty, student, and staff representatives conducted the self-study review prior to the accreditation visit. The record reveals that faculty members were in the majority on most of these committees. The CCE accreditation standards call for faculty participation in the governance of the institution; the institution met this standard during the 2004 accreditation process.

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subsequently admitted, and the policy was changed. It is not clear from the record whether the policy was changed because of reconsideration by the committee or intervention by the president.

<sup>12</sup> He stated that he does not involve himself in scheduling.

## **Other Academic Matters**

The record indicates that the faculty is involved in matters pertaining to assessment of institutional effectiveness, credentialing of faculty, award of scholarships, and adjudication of student misconduct. Faculty members sit on the Institutional Planning and Evaluation Committee, though they are not in the majority.<sup>13</sup> This Committee evaluates how effectively students are learning, by reviewing plans and reports submitted by departments and academic units; the focus is whether the institution is accomplishing its mission, goals and priorities. This Committee works directly with the respective departments to institute needed changes.

With respect to credentialing, there is a Credentials Committee reporting to the provost which evaluates credentials required by accrediting agencies for all new faculty hires, as well as for faculty members teaching new courses or transferred between departments. The record indicates that this Committee is currently comprised exclusively of faculty. Provost McAulay testified he is not aware of any instance in which this Committee's recommendations were not followed. There is a Scholarship Committee which reports to the director of enrollment services recommending policy and procedures for administration of internally administered scholarships; the Committee also makes recommendations with respect to individual scholarship recipients. Currently, two of six members are faculty. (The other members are students or representatives of the administration.) Provost McAulay testified that he is not aware of any instance in which this Committee's recommendation has not been followed.

Student misconduct which cannot be resolved informally is handled by a Conduct Review Board assembled to hear the matter. The record reveals that members of these Boards

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<sup>13</sup> As of January, 2008, four faculty members sit on this Committee, along with the director of the office of institutional effectiveness, and four members of the administrative staff.

are chosen from a list of students, faculty, and staff.<sup>14</sup> The Boards hear individual cases and make recommendations to the provost. Provost McAulay testified that the Boards' recommendations are generally followed "to the letter." He remembered only one instance in which he changed a sanction imposed on a student after reviewing the case.

## **B. NON-ACADEMIC MATTERS**

### **Faculty Hiring**

Provost McAulay testified that when there is a vacant faculty position, the chair of the respective department creates a search committee of faculty members (and perhaps an administrator). The search committee elects a chair and prepares a posting or advertisement for the position. Applications sent to the provost's office are forwarded to the search committee chair for consideration by the search committee. The search committee reviews the applications, and then selects a short list of candidates; the candidates are invited to campus for in-person interviews and may also be asked to present demonstration lectures. After the interview process, the search committee forwards a recommendation to the dean, who in turn sends a recommendation to the provost.<sup>15</sup> According to Provost McAulay, the search committee will recommend to the dean either a specific candidate, or several finalists with a list of their strengths and weaknesses. The Employer has hired 25 to 30 faculty members since 2004. Provost McAulay testified that all these hires were based on the recommendation of the faculty search committees.<sup>16</sup>

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<sup>14</sup> The current lists in evidence include 18 faculty members, 9 students, and 2 staff members. It is not clear from the record who chooses individual members for each Board.

<sup>15</sup> The provost then submits a recommendation to the president; the actual formal offer letter is issued by the executive office.

<sup>16</sup> Provost McAulay testified to a clerical glitch about two years ago involving one candidate for a position whose application was misplaced in the provost's office. After the search committee forwarded its recommendation to the dean for another applicant, the applicant whose application was misplaced called the provost's office. When it was discovered that the application had been misplaced, a copy was sent to the search committee and the provost asked

### **Termination**

The department chair or clinical division director is responsible for evaluation of faculty. Any performance deficiency is to be discussed by the front line supervisor with the faculty member; if the problem is not resolved, it is referred to the dean. Any recommendation for termination would flow from the department chair to the dean. The Employer recently instituted a grievance procedure in April, 2007 which is available to faculty in the case of termination or other adverse action. This procedure has not yet been utilized by any faculty. Pursuant to the procedure, if a grievance is not resolved, the matter is referred to the Faculty Affairs Committee for investigation and recommendation. This recommendation is given to the provost. The written procedure states that "The recommendation of the Committee is not binding upon the Provost." The provost's decision is final except in the case of dismissal, in which case it may be appealed to the president.

### **Rank and Tenure**

As is noted above, the Rank and Tenure Committee is comprised exclusively of regular faculty and makes recommendations to the deans pertaining to faculty rank and promotions. The Committee's recommendations have been uniformly followed when promotion is recommended. Faculty members may appeal to the administration if promotion is not recommended.

### **Benefits, Retirement, and Salary**

There are two separate committees which make recommendations pertaining to benefits and retirement for the entire institution. Evidently, both committees report to the vice president for finance and make recommendations to the Board of Trustees with respect to any changes in benefits. At present, three of five members of the Benefits Committee are faculty and two of

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the search committee to reconvene and consider the candidate. The candidate with the misplaced application was ultimately recommended by the search committee and was subsequently hired.

four members of the Retirement Committee are faculty. The record does not reveal whether there have been any such recommendations recently and whether they have been followed by the Board of Trustees. The record does not contain any information with respect to how individual salaries are determined.<sup>17</sup>

### **Other Non-Academic Matters**

The record establishes that the faculty has a voice in decisions with respect to other non-academic matters, such as hiring of certain administrative personnel, budgeting, acquisition of new technology, and institutional review of research. According to Provost McAulay, faculty members are appointed to search committees to fill those administrative positions which are relevant to academic programs. He also testified that the annual budget for academic areas is determined by the Provost's Council, currently consisting of deans, directors, and other administrative personnel; the faculty is also represented on this Council by the president of the Faculty Senate. As to acquisition of new technology, the Academic Technology Committee reports to the provost. The record reveals that the current membership of this committee is predominately faculty. Provost McAulay testified that a few years ago, the Employer implemented a recommendation of this Committee to remove and replace 90 faculty computers, at a cost of approximately \$60,000. As to research, the Employer is required to comply with federal guidelines to protect human and animal research subjects. Faculty members are in the majority on the governing body established for this purpose, the Institutional Review Board.

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<sup>17</sup> Regular faculty receive an annual salary, while adjunct faculty are paid a flat fee for each course taught. Also, unlike regular faculty, adjunct faculty do not receive any benefits.

### III. ANALYSIS

Turning to the contentions of the parties, the Employer contends that faculty members herein, through the committee system, have significant control over the university's academic and non-academic management, and are therefore managerial employees excluded from coverage under the Act pursuant to the Supreme Court's decision in *Yeshiva*. The Petitioner claims that faculty committees can make only recommendations to the administration, and that they therefore have no real authority to change or dictate policy. Accordingly, the Petitioner urges, they are therefore not managerial employees excluded from the Act's protections.<sup>18</sup>

In the *Yeshiva* case, decided almost 30 years ago, the Court found that faculty members at that university were managerial employees, and thus excluded from the Act's coverage. The Court defined managerial employees as those who "formulate and effectuate management policies by expressing and making operative the decisions of their employer." 444 U.S. 672, 682 (citations omitted). The Court held that managerial employees "must exercise discretion within, or even independently of, established employer policy and must be aligned with management," and that they must represent "management interests by taking or recommending discretionary actions that effectively control or implement employer policy." *Id.* at 683 (citations omitted).

The Court found that the faculty at *Yeshiva* exercised "absolute" authority in academic matters, including courses to be taught, schedules, teaching methods, grading policies, matriculation standards, and admissions policies. Further, the *Yeshiva* faculty also had

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<sup>18</sup> The Petitioner in its post-hearing brief referred to a recent case involving Palmer College of Chiropractic located in Davenport, Iowa. I have been administratively advised that in the Palmer case, there was an election held pursuant to a Stipulated Election Agreement, *not* pursuant to a Regional Director's Decision and Direction of Election. Accordingly, contrary to the Petitioner's assertion, there was no hearing, and no finding by the Board in Palmer that the faculty therein were not managerial employees. See Palmer Chiropractic University Foundation, Case 33-RC-4626.

significant input in nonacademic matters, such as the size of the student body, the tuition to be charged, and the location of a school. The Court stated, “when one considers the function of a university, it is difficult to imagine decisions more managerial than these.” 444 U.S. at 686.

In the almost 30 years since the Court decided *Yeshiva*, the Board has decided numerous cases involving *Yeshiva* issues.<sup>19</sup> It is clear from these cases that the Board has emphasized that the party seeking to exclude faculty as managerial has the burden of coming forward with evidence necessary to establish such an exclusion. The Board has also emphasized the importance of faculty control or effective control over academic areas, as opposed to nonacademic areas. See, e.g., Lemoyne-Owen College, 345 NLRB at 1128. It is not necessary for the faculty to have “absolute” control in academic matters; rather, the standard set forth in the *Yeshiva* case is “effective recommendation or control.” *Yeshiva*, 444 U.S. at 683, fn. 17.

Contrary to the Petitioner’s assertion in this case, the mere fact that an administrative hierarchy reviews faculty recommendations does not negate managerial status. See Lewis & Clark College, 300 NLRB 155, 163, fn. 41 (1990). The key consideration is effective recommendation, not final authority. American International College, 282 NLRB at 200. The issue which must be decided is whether the faculty plays a major and effective role in the formulation and effectuation of academic policy. Lewis & Clark College, 300 NLRB at 163.

Applying the above-stated considerations to the facts in this case, I find that the regular faculty makes effective recommendations in many of the critical academic areas examined by the Court and the Board. In the area of curriculum, for example, the provost testified that the

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<sup>19</sup> For cases in which the Board found faculty to be managerial employees under *Yeshiva*, see, for example: Lemoyne-Owen College, 345 NLRB 1123 (2005); University of Dubuque, 289 NLRB 349 (1988); Livingstone College, 286 NLRB 1308 (1987); American International College, 282 NLRB 189 (1986); and Boston University, 281 NLRB 798 (1986). For cases in which the Board found faculty *not* to be managerial, see, for example: University of Great Falls, 325 NLRB 83 (1997); St. Thomas University, 298 NLRB 280 (1990); Loretto Heights, 264 NLRB 1107 (1982) enfd. 742 F. 2d 1245 (10<sup>th</sup> Cir. 1984)

faculty committees deal with “every aspect” of coursework, like prerequisite sequences, new courses of study, and textbook selection. In recent years, the faculty has also effectively recommended new degree tracks, such as undergraduate degrees in psychology, exercise science, and an additional masters degree program in sports health science. The provost testified that in his four-year tenure, he has never failed to accept a curriculum recommendation from the faculty. Although faculty recommendations proceed first to the deans, there is no evidence in this record that any dean has countermanded faculty recommendations adopted by the provost. See American International College, 282 NLRB at 201; Lemoyne-Owen College, 345 NLRB at 1129.

It is also clear there is significant faculty involvement in envisioning the future academic life at the colleges. The provost testified that the Employer has embarked on preparation of a long-range Academic Master Plan extending beyond the next decade with respect to academic offerings and degree programs. This past summer, the provost, working together with the president of the Faculty Senate, established committees to formulate the Plan no later than October, 2008. This year-long process will ultimately define the institution’s academic mission looking 12 to 15 years in the future. There is heavy faculty involvement in the process; the provost noted that 75% to 80% of the members of the committees formulating the Plan are faculty members.

The faculty also makes effective recommendations with respect to admissions. The admissions committees effectively set policy and monitor the review of applicants. The provost testified there was only one instance he could recall in which an admissions committee recommendation has not been followed. This one exception does not negate the evidence of faculty authority in this area. See College of Osteopathic Medicine, 265 NLRB 295, 296 (1982).

Another academic area in which the faculty makes effective recommendations is in the formulating and application of testing standards. The record establishes that the chiropractic faculty effectively formulates, implements, and grades the clinical skills of the 1300 chiropractic students at the university. According to the provost, the OSCE Committee, dominated by faculty, is responsible for the testing of all students in two stages of the chiropractic program; this is “their show,” he testified. Similarly, the provost testified he does not involve himself in scheduling issues pertaining to these students. In the chiropractic college, the administration follows the class schedules (including assigned laboratories and classrooms) formulated by the scheduling committee.<sup>20</sup>

Other academic areas in which the faculty herein is significantly involved include accreditation, institutional effectiveness assessments, faculty credentialing, scholarship awards, and student misconduct adjudications. Faculty members predominated on most of the committees which conducted the institution’s self-study review prior to the last accreditation visit in 2004 and thus had a substantial voice in the accreditation review process.<sup>21</sup> See LeMoyne-Owen College, 345 NLRB at 1130. The committee responsible for credentialing of faculty is comprised exclusively of faculty; the provost testified he was not aware of a single instance in which this committee’s recommendations were not followed. Faculty members constitute just short of a majority of the members of the Institutional Planning and Evaluation Committee; this Committee works directly with individual departments to institute needed changes to enhance student learning. The record reflects that faculty members also play a significant role in recommending policy, procedures, and administration of scholarships through

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<sup>20</sup> Though there is no evidence with respect to faculty authority pertaining to the testing or class schedules of the 550 undergraduate and graduate students, I find there is substantial evidence that they make effective recommendations in other academic and nonacademic areas. See discussion in text.

<sup>21</sup> I also note that the university met the standard requiring faculty participation in the governance of the institution set by CCE, the accrediting agency. See Elmira College, 309 NLRB 842, 850 (1992).

the Scholarship Committee. The faculty is also a significant player in adjudication of student misconduct. The provost testified he follows the recommendations of Conduct Review Boards constituted to hear student misconduct cases. There are currently 18 faculty (of approximately 60 regular faculty) on the list to sit on such Boards.

There is ample evidence that the faculty herein plays a major role in the formulation and application of policy in certain nonacademic areas, as well. Though the Court in *Yeshiva* did not rely primarily on faculty authority in nonacademic areas, it is clearly a factor to be considered in the determination of managerial status. 444 U.S. at 686.<sup>22</sup> Here, the provost testified that 25 to 30 faculty have been hired during his tenure based on the recommendation of faculty search committees. As to promotions, the recommendations of the Rank and Tenure Committee have been uniformly followed when promotion is recommended. As to changes in the faculty handbook, the provost testified that the administration has uniformly adopted faculty recommendations for such changes. With respect to employment benefits, there are two committees with predominate or close to majority faculty participation which are authorized to make recommendations applicable to the entire university. The faculty, through its presence on committees, also has a significant voice in administration hires, budgeting, acquisition of new technology and institutional review of research.

It cannot be gainsaid that the *Yeshiva* faculty exercised a far greater degree of authority over academic and nonacademic matters than the faculty herein. However, this does not remove it from the range of institutions covered by the holding in that case,<sup>23</sup> or as applied in subsequent Board decisions. In the instant case, the regular faculty makes effective recommendations in formulating curriculum and in establishing policies, and recommending students for admission.

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<sup>22</sup> See also *College of Osteopathic Medicine*, *supra*; and cases cited in fn. 19 above.

<sup>23</sup> The Court in *Yeshiva* explained that its decision “is a starting point only” for the analysis of whether faculty are managerial. Each case must turn on its own facts. 444 U.S. at 690.

Further, the regular faculty plays a major and effective role in the formulation and effectuation of policies in other academic areas, such as testing, scheduling, accreditation, assessment of institutional effectiveness, credentialing of faculty, and scholarships. As is noted above, the faculty's influence extends to certain nonacademic areas, as well. The record herein demonstrates determinative faculty influence over new hires and promotions. The regular faculty also has a significant voice with respect to benefits, budgeting, acquisition of new technology, institutional review of research, and hiring of some administrative personnel.

In sum, the regular faculty herein exercises effective control over many of the areas found critical in *Yeshiva* and in subsequent Board cases applying it. Based on this well-settled law, I find that the regular faculty plays a major and effective role in the formulation and effectuation of management policies of the Employer and that they are therefore managerial employees.

There remains the issue of whether the following classifications should be included in a unit: (1) adjunct faculty; (2) the director of faculty development; (3) the director of career counseling; and (4) the associate registrar. The Petitioner, contrary to the Employer, would have included these classifications in its proposed unit consisting primarily of regular faculty members whom I have determined to be managerial. Inasmuch as the appropriateness of a single unit consisting solely of the remaining classifications in dispute has not been demonstrated, I shall dismiss the petition.

#### **IV. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

#### **V. ORDER**

IT IS HEREBY ORDERED that the petition herein be, and it hereby is, dismissed.

#### **VI. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, DC 20570-0001. This request must be received by the Board in Washington by 5:00 P.M., (EST) on January 25, 2008. The request

may be filed electronically through E-Gov on the Board's web site, [www.nlr.gov](http://www.nlr.gov),<sup>24</sup> but may **not** be filed by facsimile.

Dated at Atlanta, Georgia, on this 11<sup>th</sup> day of January, 2008.



362-6795

Martin M. Arlook, Regional Director  
National Labor Relations Board  
Harris Tower – Suite 1000  
233 Peachtree St., N.E.  
Atlanta, Georgia 30303-1531

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<sup>24</sup> To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, [www.nlr.gov](http://www.nlr.gov).